

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
STATE OF NEW YORK, et al.,	:	
	:	
Plaintiffs,	:	
	:	18-CV-2921 (JMF)
-v-	:	
	:	<u>ORDER</u>
UNITED STATES DEPARTMENT OF COMMERCE, et al.,	:	
	:	
Defendants.	:	
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JESSE M. FURMAN, United States District Judge:

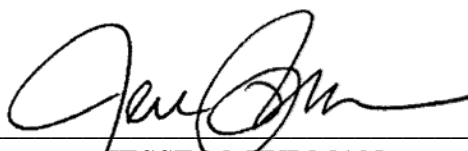
Plaintiffs' motion to partially exclude opinion testimony by Dr. John Abowd (Docket No. 527) is GRANTED in part and DENIED in part to the extent discussed, and for the reasons given, on the record at trial on November 14, 2018.

Attached to this Order is a copy of the November 13, 2018 email from Defendants' counsel addressing topics related to this motion, along with copies of the demonstrative exhibits discussed in, and attached to, that email.

The Clerk of Court is directed to terminate Docket No. 527.

SO ORDERED.

Dated: November 14, 2018
New York, New York



JESSE M. FURMAN
United States District Judge



RE: DDX-025.pdf Ehrlich, Stephen (CIV) to: Federighi, Carol (CIV),
 Furman_NYSDChambers@nysd.uscourts.gov 11/13/2018 10:24 PM
 Cc: [REDACTED]
 From: "Ehrlich, Stephen (CIV)" [REDACTED]
 To: "Federighi, Carol (CIV)" [REDACTED]
 "Furman_NYSDChambers@nysd.uscourts.gov"
 <Furman_NYSDChambers@nysd.uscourts.gov>
 Cc: [REDACTED]

9 Attachments



Defs.' SDNY Expert Disclosure.pdf Abowd Expert 10-12-18 Final.pdf PX-267.pdf PX-162.pdf PX-478.pdf



DDX-021.pdf DDX-022.pdf DDX-025.pdf DDX-020.pdf

Dear Judge Furman,

Attached please find Defendants' demonstratives DDX-20, DDX-21, DDX-22, and DDX-25. I have also attached PX-162, PX-267, PX-478, Defendants' Rule 26(a)(2)(C) Disclosure, and Dr. Abowd's expert deposition transcript for your reference.

With respect to demonstratives DDX-20–22, these simply illustrate the projected resolution of the Nonresponse Followup (NRFU) workload using various assumptions disclosed to Plaintiffs months ago. For example, DDX-20—which Plaintiffs do not challenge—illustrates resolution of the NRFU workload using assumptions from the Life Cycle Cost Estimate (table at page 20 of Defendants' Rule 26(a)(2)(C) Disclosure) and count imputation assumptions from PX-478 (so-called Memo J-12). Of course, Defendants' Rule 26(a)(2)(C) Disclosure was timely disclosed, and it is undisputed that Plaintiffs received PX-478 on October 5, 2018, discussed this document at Dr. Abowd's expert deposition, and submitted "supplemental" expert reports based on this document. See ECF 387 at 3–4, 404 at 4–5, 422 at 3, 475 at 1–3, 479 at 1–3. Demonstratives DDX-21 and DDX-22 simply illustrate how the scenario depicted in DDX-20 would change based on the lower self-response rate estimated in the Brown, et al. paper. *Compare* DDX-21 with PX-167 at p.42 ("If the NRFU data for those households have the same quality as the average NRFU data in the 2010 Census, then the result would be 561,000 (139,000) fewer correct enumerations, of which 185,000 (46,000) are additional erroneous enumerations and 376,000 (93,000) are additional whole-person census imputations."); *compare* DDX-22 with PX-167 at p.42–43 ("If all of these new NRFU cases go to proxy responses instead, 59 the result would be 1,750,000 (432,000) fewer correct enumerations, of which 272,000 (67,000) are erroneous enumerations, and 1,477,000 (365,000) are whole-person census imputations.").

With respect to DDX-25, as discussed today, this demonstrative simply manipulates certain post-enumeration statistics from the 2010 Census (Tables 8 and 9 of PX-267) to illustrate how each component of census coverage measurement (erroneous enumerations, gross omissions, and whole-person census imputations) impacts differential net undercount. PX-267 is a publicly-available document discussed extensively during Dr. Abowd's expert deposition. See, e.g., Tr. 220:7–229:15. But perhaps more importantly, Dr. Abowd explained the exact point this demonstrative is meant to illustrate during that same deposition. Tr. 192:5–194:12. Indeed, the impetus for Plaintiffs' discussion at the deposition was Dr. Abowd's opinion—set forth in Defendants' Rule 26(a)(2)(C) Disclosure—that "[n]either the Census Bureau nor any external expert has produced credible quantitative evidence that the addition of a citizenship question to the 2020 Census would increase the net undercount or increase differential net undercounts for identifiable sub-populations." Defs.' Rule 26(a)(2)(C) Disclosure at 3.

I'm happy to discuss these demonstratives further if it would be helpful to the Court.

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch
[REDACTED]

From: Federighi, Carol (CIV)
Sent: Tuesday, November 13, 2018 9:22 AM
To: Furman_NYSDChambers@nysd.uscourts.gov
Cc: Ehrlich, Stephen (CIV) [REDACTED]
Subject: DDX-025.pdf

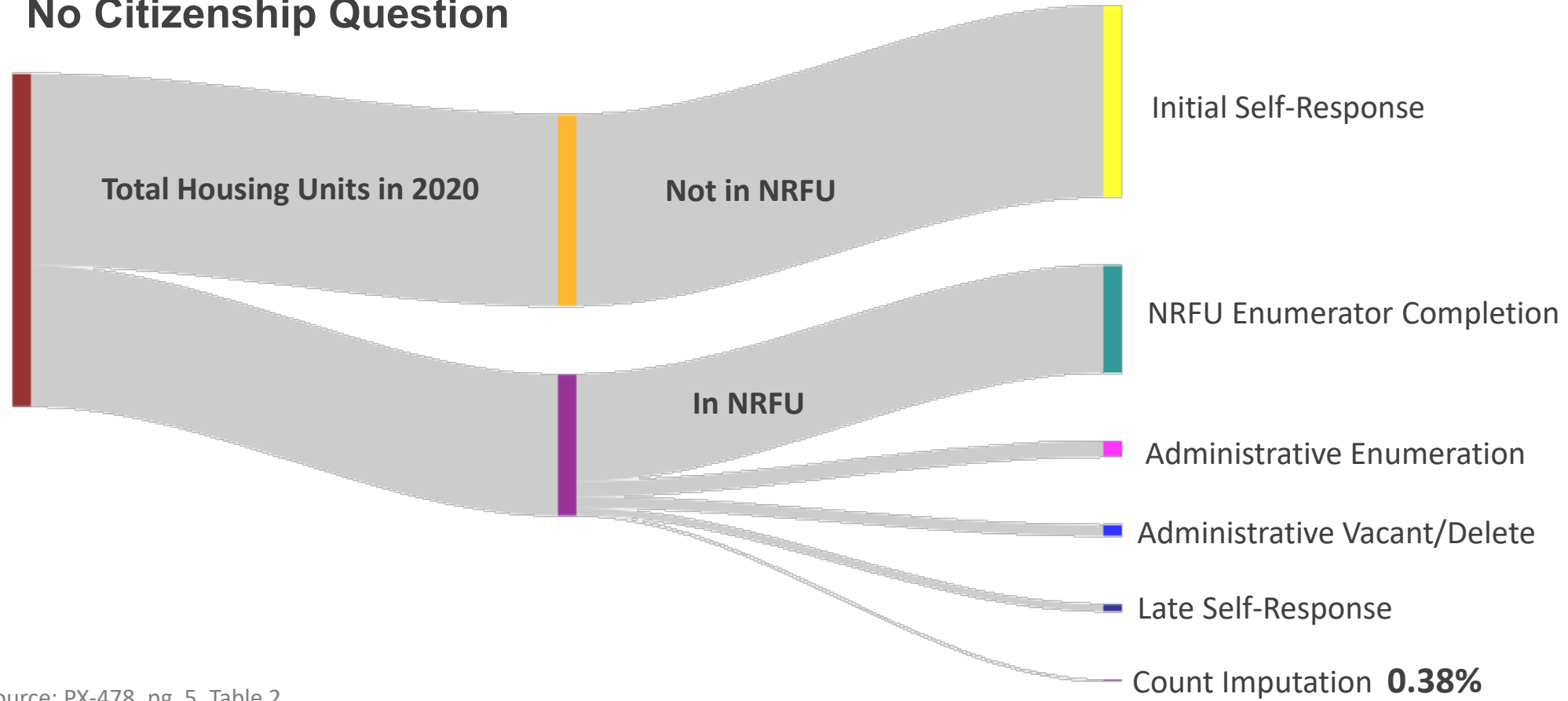
Judge Furman - Attached please find Defendants' Demonstrative DDX-25 which was discussed in court this morning.

Carol Federighi

Sent from my Verizon, Samsung Galaxy smartphone

2020 Census: Scenario A, No Citizenship Question

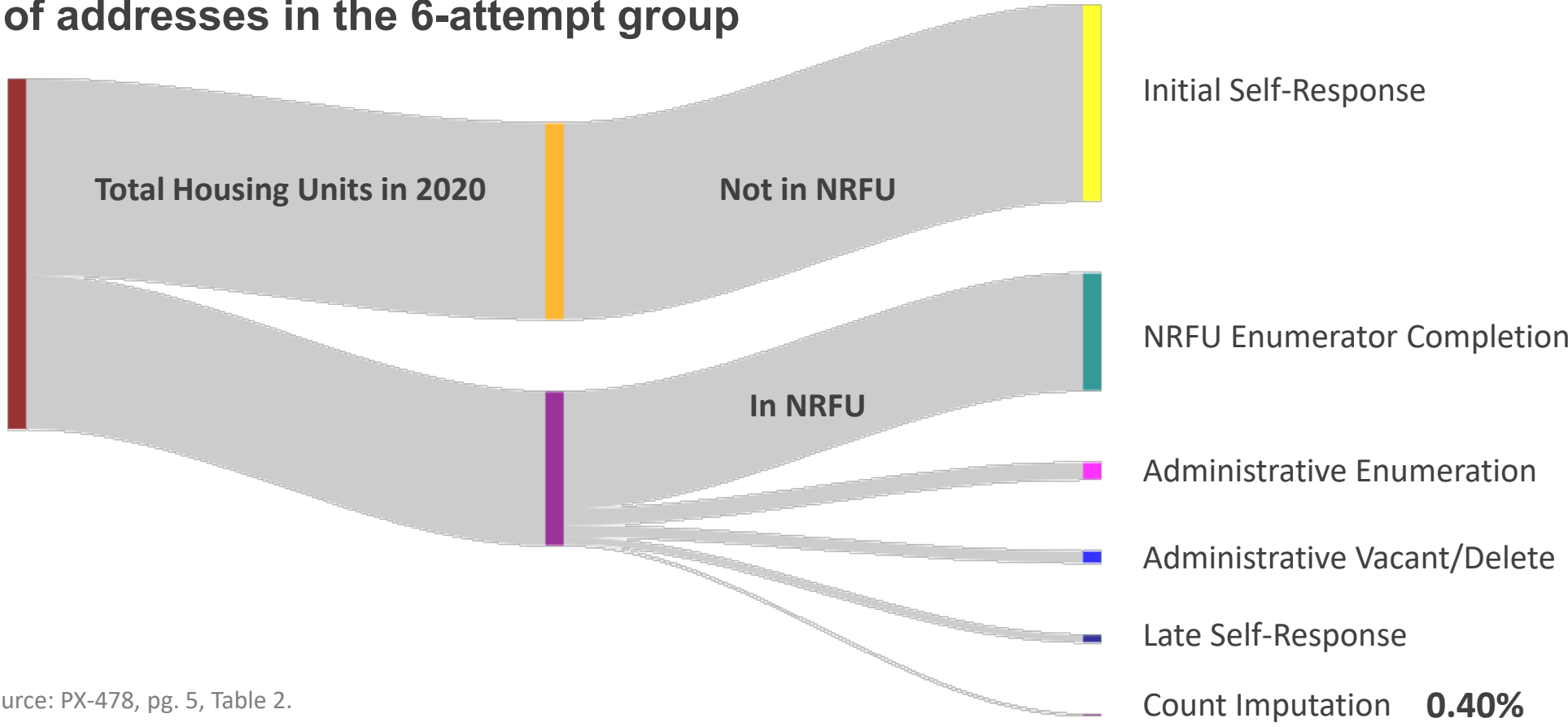
No Citizenship Question



Source: PX-478, pg. 5, Table 2.

2020 Census: Scenario B, Citizenship Question

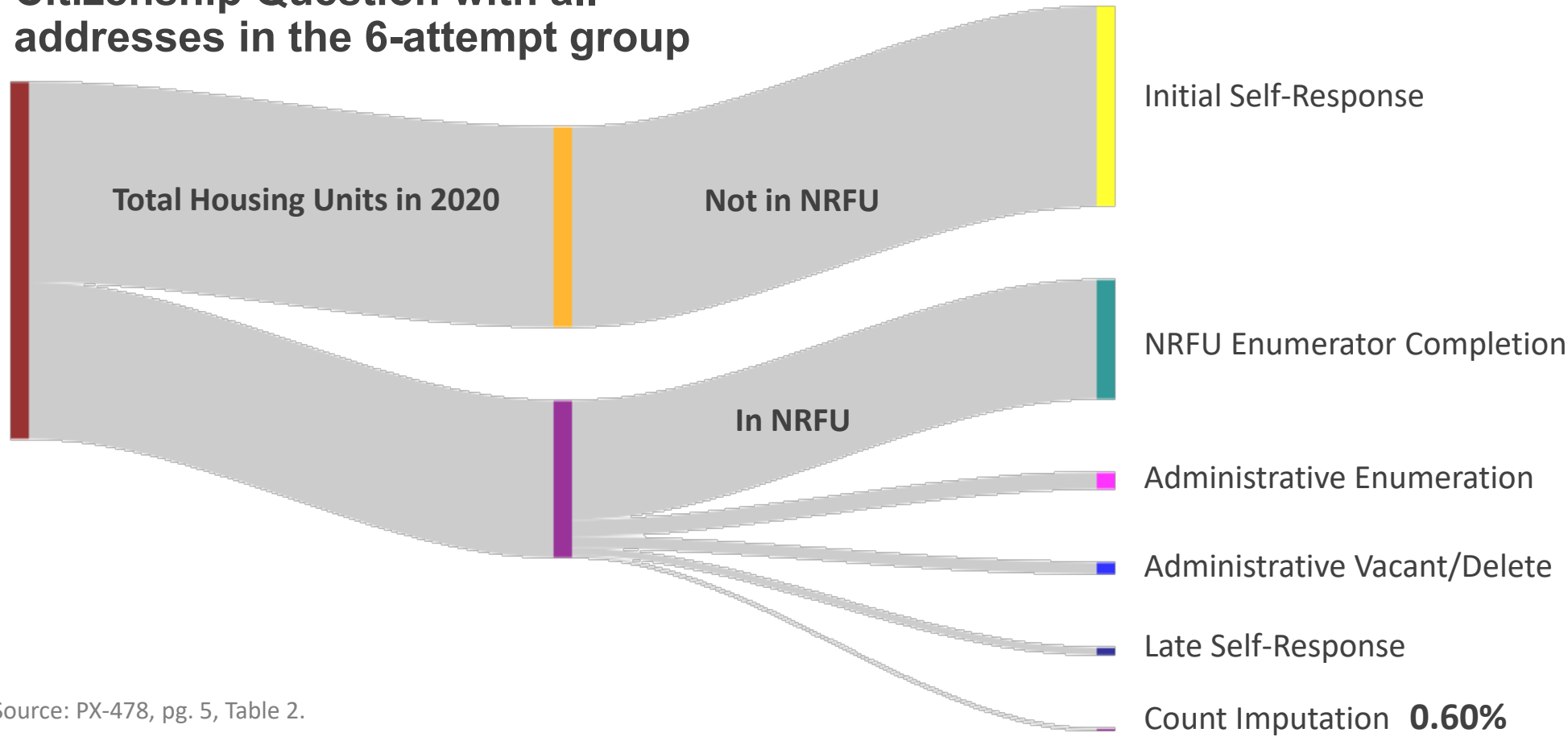
Citizenship Question with average number of addresses in the 6-attempt group



Source: PX-478, pg. 5, Table 2.

2020 Census: Scenario C, Citizenship Question

Citizenship Question with all addresses in the 6-attempt group



Source: PX-478, pg. 5, Table 2.

Coverage Estimation of Differential Net Undercount

	Base			Scenario A			Scenario B			Scenario C			Scenario D		
Estimated components	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)
Gross omissions	3.8%	7.7%	3.9%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%
Erroneous enumerations	3.0%	3.9%	0.9%	3.0%	4.3%	1.3%	3.0%	4.2%	1.2%	3.0%	9.0%	6.0%	3.0%	8.7%	5.7%
Whole-person census imputations	1.6%	2.4%	0.8%	1.6%	2.6%	1.0%	1.6%	5.7%	4.1%	1.6%	2.5%	0.9%	1.6%	5.4%	3.8%
Net undercount	-0.83%	1.54%	2.37%	-0.83%	10.74%	11.58%	-0.83%	7.88%	8.72%	-0.83%	6.13%	6.97%	-0.83%	3.27%	4.11%

	Base			Scenario A			Scenario E			Scenario C			Scenario F		
Estimated components	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)
Gross omissions	3.8%	7.7%	3.9%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%
Erroneous enumerations	3.0%	3.9%	0.9%	3.0%	4.3%	1.3%	3.0%	4.0%	1.0%	3.0%	9.0%	6.0%	3.0%	8.4%	5.4%
Whole-person census imputations	1.6%	2.4%	0.8%	1.6%	2.6%	1.0%	1.6%	9.7%	8.1%	1.6%	2.5%	0.9%	1.6%	9.3%	7.7%
Net undercount	-0.83%	1.54%	2.37%	-0.83%	10.74%	11.58%	-0.83%	3.78%	4.61%	-0.83%	6.13%	6.97%	-0.83%	-0.84%	0.00%

	Base			Scenario A			Scenario G			Scenario C			Scenario H		
Estimated components	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)	Non-Hispanic white	Hispanic	Differential (H - NHW)
Gross omissions	3.8%	7.7%	3.9%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%	3.8%	16.9%	13.1%
Erroneous enumerations	3.0%	3.9%	0.9%	3.0%	4.3%	1.3%	3.0%	3.9%	0.9%	3.0%	9.0%	6.0%	3.0%	8.2%	5.2%
Whole-person census imputations	1.6%	2.4%	0.8%	1.6%	2.6%	1.0%	1.6%	11.8%	10.2%	1.6%	2.5%	0.9%	1.6%	11.2%	9.6%
Net undercount	-0.83%	1.54%	2.37%	-0.83%	10.74%	11.58%	-0.83%	1.52%	2.35%	-0.83%	6.13%	6.97%	-0.83%	-3.10%	-2.26%

Source: PX-267, pg. 19 & 20, Tables 8 & 9, and Abowd's calculations.